

Remarks:

Applicant has read and considered the Office Action dated October 26, 2009 and the references cited therein. Claims 1 and 5 have been amended. Claims 1-14 are currently pending. Reconsideration is hereby requested.

In the Action, claim 5 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Action indicated that there was insufficient antecedent basis for "the operating system of the PDA" at the fourth line of claim 5. Claim 5 has been amended so that the reference to an earlier recitation of the operating system has been cancelled. Applicant asserts that the rejection has been overcome and should be withdrawn.

Claims 1-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Stenzler in view of Grey. Applicant respectfully traverses the rejection. Applicant asserts that the present invention provides for improved control and provides superior therapy that is not possible with the Stenzler and/or Grey references or any other prior art or combination thereof. As previously discussed, Stenzler does not teach or suggest a system in which a therapy-related evaluation is performed based on data from at least one sensor and in which the evaluation is used to generate control data for the Nebulizer from a PDA. Stenzler only discloses an inhalation sensor that provides data to start and/or end a therapy session. Conversely, the present invention provides for an improved aerosol therapy device and includes a processor that generates therapy data by the signal-based processing of at least one measuring signal. The bidirectional communication between the nebuliser and the PDA provides for continued and updated control to optimize the operation of the device. The PDA of the present invention conducts a therapy related evaluation of the transmitted therapy data and provides control data back to the nebuliser for optimizing operation of the aerosol therapy device. Stenzler and/or Grey or any combination thereof fails to teach or suggest such a system.

Moreover, claim 1 has now been amended and recites a communication device for transferring the therapy data processed in relation to signals from the nebuliser to the PDA for receiving control data transmitted from the PDA to the nebuliser. Moreover, claim 1 now recites control means for activating and controlling the aerosol generator based on the control data received from the PDA. Claim 1 also recites the control means comprise a preset controlling the nebuliser if no control data is received. Applicant asserts that Stenzler and Grey fail to teach or suggest an aerosol therapy device with a nebuliser having the recited communication device and control means. In the present invention, the system has a default mode that provides for operation even if no data is received from the PDA. However, control data received from the PDA influences and modifies the preset to optimize the operation of the nebuliser. The present invention provides a system that ensures operation without the PDA and then after communication, further evaluation and optimization with communication to and from the PDA and an evaluation conducted by the PDA to achieve superior operation. Applicant asserts that Stenzler fails to teach or suggest such an aerosol therapy device as recited in claim 1.

Moreover, Grey fails to remedy the shortcomings of Stenzler. Therefore, Applicant asserts that claim 1 patentably distinguishes over Stenzler and/or Grey or any combination thereof. Applicant therefore requests that the rejection of claim 1 be withdrawn.

In addition, Applicant asserts that claims 2-14 depending from claim 1, are also allowable over the combination of Stenzler and Grey for at least the same reasons. In addition, claims 2-14 recite additional non-obvious differences that provide advantages over the prior art and are also believed to be in condition for allowance. Applicant therefore requests that the rejection of claims 1-14 be withdrawn.

A speedy and favorable action in the form of a Notice of Allowance is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicant's representative at (612) 336-4728.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.



Respectfully submitted,

MERCHANT & GOULD P.C.

Dated: _____

4/26/10

By: _____

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